SBCivil Writ Petition No.47/2001

(Smt.Shama Devi v. State of Rajasthan & Anr.)

Date of Order :: 24th October, 2005

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Chaitanya Gahlot, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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By this petition for writ a challenge is given by the petitioner to the order dated 15.11.2000 passed by Child Development Project Officer, Nokha, Department of Women and Children Development.

The petitioner was employed as “Aanganwari” worker by the respondents at the consolidated honorarium at their “Aanganwari” centre . The service of the petitioner was discontinued by order dated 15.11.2000 under recommendation of the Gram Panchayat under supervisory control of which the “Aanganwari” centre where the petitioner was working was in operation.

This Court while issuing notice to show cause to the respondents also pleased to grant an interim order staying the operation of the order impugned dated 15.11.2000. In pursuant to the interim order the petitioner is still working as “Aanganwari” worker with the respondents.

It is contended by counsel for the petitioner that the respondents did not adhere to principles of natural justice as no notice was given by the respondents prior to taking the action which resulted in termination of the petitioner from service. It is also contended that though the order dated 15.11.2000 refers to a decision of Gram Sabha but in fact Gram Sabha of the Gram Panchayat under supervision of which the "Aanganwari" centre was operating never took decision to discontinue the petitioner from service. The petitioner to substantiate the statements above, alongwith writ petition placed affidavits of some of the members of Gram Panchayat stating therein that no such decision was taken by the Gram Sabha.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner is having no right to hold the post as her services were utilised on consolidated honorarium which does not create any right in her favour, therefore, there was no need to give her any notice before taking action to terminate her from the work concern. It is also urged that the order of appointment itself mentions that no notice was required to be given before discontinuation from service. It is also averred in reply to the writ petition that certain complaints against the petitioner from the residents of the village where the "Aanganwari" centre was in operation were received and

the Gram Sabha of the Gram Panchayat concerned after considering those complaints resolved to discontinue the petitioner from service.

Heard counsel for the parties.

The petitioner was admittedly employed with the respondents as “Aanganwari” worker at the consolidated honorarium. It is true that not being regular employee the petitioner is not required to be subjected to regular disciplinary proceedings if any allegation of misconduct is there against her but the respondents were certainly under obligation to ask the petitioner about her version for the allegations levelled. The minimum requirement for the respondents was to serve atleast a notice calling upon the petitioner to defend her before taking action which resulted into her discontinuation from service.

The condition mentioned in the order of appointment regarding non giving of notice in the event of termination from service relates to termination simplicitor and it cannot be utilised to discontinue from service even if it is out come of misconduct alleged. In the present case as no notice before discontinuing the petitioner from service was given, therefore, her termination from service is nothing but is an arbitrary exercise of powers.

Beside the above in view of the affidavits given by some of the members of Gram Sabha the holding of meeting of Gram Sabha wherein decision to discontinue the petitioner was taken, itself is under clouds. The appropriate course, therefore, was to serve a notice upon the petitioner seeking her version with regard to complaints and then after considering the same an action could have been taken. In view of the available facts the act of the respondents suffers from the vice of arbitrariness being in violation of principles of nature justice, the same, therefore, is illegal.

In view of whatever discussed above the order impugned dated 15.11.2000 discontinuing the petitioner from service is declared illegal and the same is hereby quashed. The respondents are directed to continue the petitioner in service. However, it is open for the respondents to take appropriate action against the petitioner after giving an appropriate opportunity of hearing to her.

With these observations the writ petition is disposed of.

(GOVIND MATHUR),J.

kkm/ps.